

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DAVID QUIROGA

V.

CITY OF GALVESTON

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CIVIL ACTION NO. G-10-397

OPINION AND ORDER

This case was referred to this Court for the purpose of conducting all pretrial proceedings by the Honorable Kenneth M. Hoyt, United States District Judge, on October 1, 2010. On November 10, 2011, the Defendant, City of Galveston, filed a Motion for Summary Judgment seeking the dismissal of the entire employment discrimination complaint of Plaintiff, David Quiroga. On November 14, 2011, Quiroga filed a “Motion to Abate the Response to Defendant’s Motion for Summary Judgment” (Instrument no. 12) in an effort to give him time to take the deposition of five of the City’s potential witnesses. The Court now issues this brief Opinion and Order.

Quiroga’s Motion must be considered in light of the provisions of Rule 56(d) of the Federal Rules of Civil Procedure. Under that Rule, the Court may defer consideration of a motion for summary judgment to allow time for discovery, but only “[i]f the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition.” See Bauer v. Albemarel Corp., 169 F.3d 962, 968 (5th Cir. 1999) (To obtain a continuance of a motion for summary judgment a party must indicate why he needs additional discovery and *how* the additional discovery will create a genuine issue of material

fact.) (emphasis in original) (citations omitted) Quiroga's instant Motion is deficient in this regard, however, instead of denying the Motion the Court will permit Quiroga to supplement the Motion in an effort to make it compliant with the Rule.

It is, therefore, **ORDERED** that Quiroga **SHALL** file any supplemental submissions in support of his Motion on or before **November 30, 2011**; failure to do so will result in the Motion being denied.

DONE at Galveston, Texas, this 15th day of November, 2011.



John R. Froeschner
United States Magistrate Judge